United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-2655

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex. rel
ALFRED LEWIS,

Petitioner-Appellant

-against-

Docket No. 74-2655

ROBERT J. HENDERSON, Superintendant
of Auburn Correctional Facility,

Appellee.

APPENDIX FOR PETITIONER-APPELLANT

LAWRENCE STERN
Attorney for Petitioner/
Appellant
11 Monroe Place
875-4304

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

11/9

Jury demand date:

74-CV- 35

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
U.S. ex rel ALFRED LEWIS, Petitioner vs. ROBERT J. HENDERSON, Superintendent of Auburn Correctional Facility, Respondent	For plaintiff: Alfred Lewis ACF #62476 Auburn Correctional Facility 135 State Street Auburn, New York 13021 For defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.		DI
J.S. 5 mailed	Clerk						
J.S. 6 mailed	Marshal						
Basis of Action: Petition for Writ of Habeas Corpus	Docket fee	,					
	Witness fees						
Action arose at:	Depositions						

- 366

DATE	PROCEEDINGS	Date Order or Judgment Noted
1974		
Sept. 4	(1) Filed Petition for Writ of Habeas Corpus	
" 4	(2) " Brief	
" 4	(3) " Memorandum-Decision and Order (8/20/74) denying and dismissing Petition fo Writ of Habeas Corpus and directing Clerk to file papers without payment of fee. Leave to proceed in forma pauperis is granted. HON. E. PORT, USDJ	
" 4	(4) Filed judgment	
" 4	(5) " Letter from petitioner and affidavit in forma pauperis	
" 4	(6) " Motion for reconsideration	
" 4	(7) " Order granting motion for reconsideration and reaffirming original decisi	
" 30	(8) " Notice of Appeal	
Oct. 7	(9) " Application and Order of Judge Port (10/3/74) for reconsideration	
Oct. 7	(10) " Notice of Appeal	

CERTIFICATE OF PROBABLE CAUSE

B

74-8373

B 40

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 19th day of December, one thousand nine hundred and seventy-four

74-2655

United States ex rel. Alfred Lewis,

Petitioner,

v.

Robert J. Henderson, Superintendent of Auburn Correctional Facility,

Respondent.

It is hereby ordered that the motion made herein by counsel for the Lawrence Stern, Esquire

~~appellant~~ ~~appellee~~ petitioner ~~respondent~~

by notice of motion dated November 19, 1974 for a certificate of probable cause, leave to proceed in forma pauperis; for the assignment of counsel under the Criminal Justice Act; for leave to orally argue this motion before a panel of this court

be and it hereby is granted ~~denied~~ except that

~~It is further ordered that~~ the request for leave to argue the motion orally is denied as moot.

Wilfred Feinberg

William H. Mulligan Circuit Judges

Frederick vP. Bryan Circuit Judges
District Judge

DECISION AND ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK DATED AUGUST 20, 1974, AUGUST 27, 1974 AND OCTOBER 3, 1974

C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U. S. ex rel. ALFRED LEWIS,

Petitioner,

vs. 74-CV-

ROBERT J. HENDERSON, Superintendent
of Auburn Correctional Facility,

Respondent.

EDMUND PORT, Judge

Memorandum - Decision and Order

The Clerk of the court has sent to me for my consideration a petition for a writ of habeas corpus together with an affidavit in forma pauperis from an inmate now confined in the Clinton Correctional Facility, Dannemora, New York. The inmate was confined in the Auburn Correctional Facility when he sent the petition to the Clerk of the court. The petition is accompanied by a 27 page brief prepared by the Cornell Legal Assistance Project for the Auburn Correctional Facility.

The petitioner was convicted in the Bronx County Court, after a jury trial in 1958, of the crimes of Robbery 1st degree, Grand Larceny 1st degree, and Assault 2nd degree, and sentenced to three consecutive terms totaling 30-60 years imprisonment. The conviction was affirmed on direct appeal,[1] and the Court of Appeals denied leave to appeal on July 15, 1960. A post-trial "Huntley" hearing was held in the Bronx County Supreme Court, and found certain of petitioner's confessions to have been voluntary by a decision dated March 24, 1970. The Appellate Division affirmed this determination,[2] and the Court of

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1 People v. Lewis, 10 A.D.2d 924 (1st Dept. 1960).

2 People v. Lewis, 35 A.D.2d 1086 (1st Dept. 1970).

Appeals denied leave to appeal.

The petitioner has had quite a number of collateral proceedings in both the state and federal courts over the years since his conviction, including the denial of a federal petition for habeas corpus by Judge John T. Curtin of the Western District of New York in 1971 by two separate opinions: (A) one dated June 28, 1971 finding, inter alia, certain of petitioner's confessions to have been voluntarily made, and (B) another dated August 3, 1971 which dismissed as without merit petitioner's claim that the trial judge improperly charged the jury concerning voluntariness. Although Judge Curtin's decisions[3] were made without a hearing, they were based upon the full trial transcript, appellate briefs, a coram nobis transcript, the Huntley hearing transcript and the state court judge's decision thereon. Judge Curtin denied a certificate of probable cause, as did the Second Circuit. The Supreme Court denied certiorari on December 4, 1972.

Although the petition herein is extensive and rambling, the claims made herein are essentially as follows: (1) that the Huntley hearing court failed to secure the attendance of certain witnesses at the Huntley hearing and the assistant district attorney at the Huntley hearing "probably lied"[4] when he stated that a certain witness' address was unknown and that the did not know whether that witness (one Walsh) was alive or dead; (2) that the trial court failed to properly charge the jury concerning voluntariness; (3) that petitioner's confessions were involuntary. Each of these contentions will be separately considered.

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[3] United States ex rel. Alfred Lewis v. Mancusi, Civil No. 1970-322 (W.D.N.Y. 1971).

[4] Petition, p. 19.

CONTENTION (1):

This contention is explained at pages 18-20 of the petition and relevant portions thereof are set forth below:

> The defendant also moved on January 7, 1970 that a means be provided to secure the presence to testify at the (Huntley) hearing of police and F.B.I personnel who the trial record shows were present at the interrogation and/or confession of the defendant which were the subjects of the hearing . . ., including Deputy Inspector Walsh who defendant accused at the trial of participating directly in the beating of the defendant . . . and who the trial record establishes actually took a challenged confession from the defendant which went to the jury. The defendant was told by the Court to discuss the matter of the witnesses with counsel who would endeavor to locate them . . ..
>
> In the case of Deputy Inspector Walsh, the court inquired of the assistant district attorney handling the case for the People if he intended to call Walsh as a witness. . .. The assistant district attorney, admitting that Walsh was present at the defendant's confession . . . answered . . . that Walsh was retired, perhaps dead and his address and whereabouts unknown, which statement led the court to make no effort to secure Walsh's attendance to testify at the hearing . . ..
>
> * * * *
>
> The defendant's attorney, although indirectly instructed by the Court on Jan. 7, 1970 to make this endeavor . . . as already indicated at page 18 hereof, refused to try to locate Walsh or the other witnesses and took the recorded position (Huntley Minutes 24-27) that they would be hard to locate and that since they were not called to testify at the original trial they might not have anything significant to say.

Petitioner does not allege that he ever attempted to actually subpoena the unnamed witnesses or Walsh. Further, their materiality to the Huntley hearing is open to question as they were not called as witnesses upon the original trial and did not testify. In connection with the witness Walsh, the petitioner's sole basis for concluding that the assistant district attorney "probably lied" is that he (the petitioner) claims that he was able to determine at a later date that Walsh was still alive and living in the New York City area. Finally, it appears that the witnesses

were not called or located for the purposes of the Huntley hearing because petitioner's counsel apparently did not deem them of sufficient importance to the proceeding; the competency of petitioner's counsel is not before this court in this proceeding.

In my opinion, under the facts disclosed in the petition, the first contention is without federal or constitutional merit and will be denied and dismissed.

CONTENTION (2):

Petitioner's second contention has previously been passed upon by Judge Curtin and found to be without merit. United States ex rel. Alfred Lewis v. Mancusi, supra, decision of August 3, 1971. I am satisfied that the ends of justice do not require this court to reexamine that determination, and this contention is also denied and dismissed. 28 U.S.C. §2244(a).

CONTENTION (3):

Initially, petitioner asserts that the "Huntley" court considered only one of his confessions and failed to determine the voluntariness of two additional confessions made after the initial confession. This may be so, but it was petitioner's attorney who requested the "Huntley" court to so limit its examination. See Petition, at p. 17 fn. 6, and p. 21; and p. 1 of Judge McCaffrey's decision on the Huntley hearing, annexed to the petition. In addition, petitioner also states that he agreed with this strategy at the time. See Petition, p. 21. Accordingly, I am of the opinion that no constitutional violation has been shown.

Petitioner also claims that the "Huntley" hearing judge, Hon. Edward T. McCaffrey, erred in the standard he utilized to determine voluntariness. Petitioner quotes from the "Huntley" decision

as follows:

> This court is satisfied beyond a reasonable doubt that the statements made by defendant to Detective Beckles and to Detective Corbett, respectively, on the 18th of February 1958 at the 42nd Precint were voluntarily made and were not the result of physical coercion of any kind.

Petitioner claims that the quoted portion of Judge McCaffrey's decision indicates that he failed to consider the effect of mental or psychological coercion upon the voluntariness of his confessions.

An examination of Judge McCaffrey's decision on the "Huntley" hearing reveals its thoroughness and his full familiarity with the testimony upon petitioner's trial[5] as well as petitioner's contentions. After the "Huntley" hearing, Judge McCaffrey found petitioner's statements to be voluntary and not the result of physical coercion of any kind. Judge Curtin, after his own review of the full file in petitioner's case, found no reason to upset Judge McCaffrey's determination on the "Huntley" hearing and likewise dismissed petitioner's contentions in connection with the voluntariness of his confessions.

Simply from the phraseology utilized by Judge McCaffrey on his "Huntley" hearing determination, quoted on the top of this page, and Judge Curtin's reliance upon the same in his decision,[6] I will not presume that both judges were unaware of and applied the wrong standards to test the voluntariness of petitioner's confessions. See 28 U.S.C. §2254(d); La Valle v. Delle Rose, 410 U.S. 690 (1973); and Townsend v. Sain, 372 U.S. 293, 314-315 (1963). This is particularly true in view of the fact that, to this court at least, petitioner relied most heavily upon the alleged physical coercion to upset

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[5] Judge McCaffrey was the trial judge upon petitioner's trial; the "Huntley" hearing consisted largely, by petitioner's and the People's consent, of the submission of the trial transcript.

[6] Petitioner also contends that Judge Curtin applied the incorrect standard.

the voluntariness of his confessions, vis a vis the claimed mental or psychological coercion.

Accordingly, contention (3) will be also denied and dismissed.

For the reasons herein, it is

ORDERED, that the petition herein be and the same hereby is denied and dismissed. Leave to proceed in forma pauperis is granted, and the Clerk is directed to file the papers herein without the payment of the prescribed fees.

Edmund Port
United States District Judge

Dated: August 20, 1974
Auburn, New York.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. ALFRED LEWIS,

Petitioner,

v.

74-CV-

ROBERT J. HENDERSON, Superintendent
of Auburn Correctional Facility,

Respondent.

EDMUND PORT, Judge

ORDER

By Memorandum-Decision and Order dated August 20, 1974, I dismissed the above captioned petition for federal habeas corpus relief.

I have received on August 21, 1974, additional papers from the petitioner, sworn to on August 19, 1974, entitled "Amendment of Petition for Habeas Corpus." These papers contain nothing, in my opinion, to change this court's determination of August 20, 1974. Treating the papers as a motion for reconsideration, the same is granted, and upon reconsideration, the original decision is reaffirmed and adhered to. The Clerk is directed to file the papers herein with the other papers in this action.

It is So Ordered.

Edmund Port
United States District Court Judge

Dated: August 27, 1974.
Auburn, New York.

74-CV-366

United States District Court

NORTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. ALFRED LEWIS,

Petitioner

vs.

ROBERT J. HENDERSON, Superintendent of Auburn Correctional Facility,

Respondent.

ORDER

PORT, JUDGE

The within application for a certificate of probable cause to appeal from the decision of the undersigned dated August 20, 1974, in this case is hereby denied as not raising substantial questions to be determined on appeal.

The decision dated August 20, 1974 in the within matter has been reviewed.

The within motion for a reconsideration of the decision dated August 20, 1974 in the within case is denied.

SO ORDERED.

Edmund Port

United States District Judge

Dated: Auburn, New York
October 13, 1974.

DECISIONS AND ORDERS OF THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NEW YORK DATED JUNE 28, 1971
AND AUGUST 3, 1971

D

EXHIBIT B

Western District Court decision of June 28, 1971 denying petition for a writ of habeas corpus, Curtin, J., Civil 1970-322.

United States District Court
Western District of New York

United States ex rel Alfred Lewis Petitioner, vs Vincent R. Mancusi, Warden, Attica Prison, Respondent.	Civil 1970-322

Petitioner, a state prisoner confined at Attica State Correctional Facility, filed an application on May 6, 1970 challenging the identification procedure used in his case. By order of July 16, 1970, this Court ordered the production of the transcript of petitioner's trial, the briefs and other records of his trial and subsequent appeal. Thereafter on December 24, 1970, the petitioner filed a paper which he entitled "Motion to Amend" his petition for a writ of habeas corpus. In this motion, he alleges that the confession he made was involuntary. This motion shall be filed and made a part of the record.

The petitioner was convicted on November 25, 1958 of the crimes of robbery in the first degree, grand larceny in the first degree, and assault in the second degree after a trial in the Bronx County Court before Judge Edward T. McCaffrey. This Court has considered the transcript of petitioner's trial, the proceedings of the coram

nobis application made before Judge McCaffrey, the briefs of the parties, the transcript of the Huntley hearing held before Judge McCaffrey in January 1970 and Judge McCaffrey's decision.

The facts of the crime briefly stated are as follows: At about 12:30 P.M. on February 6, 1955, the Manufacturers Trust Company at 150 Fifth Street and Third Avenue in the Bronx was robbed of about $12,000.00 by a man brandishing a gun. Seizing a twelve-year-old invalid girl, the robber directed the tellers to put the money in paper bags he provided. He exited the bank pulling the little girl, her mother and sister with him. Petitioner was positively identified by seven witnesses at the trial who had previously identified him, five by viewing through a peephole at the police station, and two at a four-man lineup. Judge McCaffrey did not hold an identification hearing during the coram nobis application, but rather reviewed the trial transcript which reveals that defendant's counsel conducted on able and thorough cross-examination of the identification witnesses. Concerning the pretrial identification procedures, Judge McCaffrey found:

> "In any event the record discloses forceful in court identification predicated on a full and adequate opportunity to observe defendant at the scene of the crime rendering harmless the misleading circumstances which attended the earlier identification."

Judge McCaffrey held a Huntley hearing to determine whether petitioner's confession was voluntarily made, writing a decision setting forth in detail his findings of fact and conclusions of law. Upon review of the transcript and the court's decision, the court finds no reason to disturb his conclusion that the petitioner's statements to the officers were voluntarily made and were not the

result of physical coercion of any kind. The application of petitioner is denied Title 28, United States Code, Section 2254-(B).

Certificate of probable cause is denied.

Permission to appeal in forma pauperis is also denied, with the qualification that the petitioner may file with the Clerk of the United States District Court, United States Court House, Buffalo, New York, a notice of appeal without the payment of filing fees.

This denial does not prevent the petitioner from applying directly to the Court of Appeals for the Second Circuit, United States Court House, Foley Square, New York City, for a certificate of probable cause, and for permission to prosecute an appeal in forma pauperis.

So ordered

_____

John T. Curtin
United States District Judge

Dated: June 28, 1971.

EXHIBIT C

Western District Court decision of August 3, 1971 denying petition for a writ of habeas corpus, Curtin, J. Civil 1970-322.

United States District Court
Western District of New York

United States ex rel Alfred Lewis, Petitioner, vs Vincent R. Mancusi, Warden, Attica Prison Respondent	Civil 1970-322

In this matter, an application for a writ of habeas corpus pursuant to Title 28, United States Code, Section 2241 et seq., the court filed on June 28, 1971 a decision which denied relief. In correspondence dated June 30, 1971, the petitioner has brought to the Court's attention the failure of the Court's opinion to mention one of the points raised in amending application papers dated June 29, 1970.

The Clerk is directed to file the papers dated June 29, 1970 without prepayment of filing fees.

Petitioner's entire application papers raised three points: improper identification, involuntary confessions, and improper jury instructions. The last point was not expressly treated in the Court's earlier opinion.

Petitioner claims the jury was improperly charged in two respects. First, it is claimed that the Court improperly charged the jury on

determining the voluntariness of the confession. Second, the jury was not properly charged, it is alleged, with respect to the admission of certain money as evidence.

Neither of these alleged errors was ever raised on appeal in the state courts.

In any event, both are without merit. Accordingly, petitioner's application is, in these respects also, denied.

Certificate of probable cause is denied.

Permission to appeal in forma pauperis is also denied, with the qualification that the petitioner may file with the Clerk of the United States District Court, United States Court House, Buffalo, New York, a notice of appeal without the payment of filing fees.

This denial does not prevent the petitioner from applying directly to the Court of Appeals for the Second Circuit, United States Court House, Foley Square, New York City, for a certificate of probable cause, and for permission to prosecute an appeal in forma pauperis.

So ordered

_____

John T. Curtin
United States District Judge

Dated: August 3, 1971.

OPINION OF THE SUPREME COURT
OF THE STATE OF NEW YORK
BRONX COUNTY, DATED MARCH
31, 1970

E

EXHIBIT D

Opinion of the Supreme Court of Bronx County dated March 24, 1970 and entered March 31, 1970 denying relief after a confessions-voluntariness hearing (McCaffrey, J.)

Supreme Court: Bronx County
Trial Term Part XIV

The People of the State of New York -against- Alfred Lewis, Defendant.	Ind. No. 219-58 Hearing

McCaffrey, J.:

Defendant was convicted in 1958 following a trial by jury and thereafter sentenced to a term in State's Prison. Pursuant to an order of this Court, he was accorded a hearing addressed to the issue of the voluntariness or involuntariness of his confession or confessions introduced at the trial. At the hearing the People introduced the trial minutes and rested. Defendant's attorney requested the Court to limit perusal of the trial minutes to the testimony of Detectives Beckles and Corbett and the defendant. In response the Court advised that perusal of the trial minutes would be limited to those pages of testimony having to do with the voir dire covering the statements made by defendant to Detectives Beckles and Corbett.

At the trial, Detective Beckles testified that on February 17, 1958 about 8:30 p.m. at an address in New York County on the complaint of one Elizabeth Waller he took defendant into custody. During the intervening time until the next day about 1 p.m. he was with the defendant except for a brief period of

time. The next day, he, Detectives Alfano and Corbett and the defendant arrived at the 42nd Squad (Bronx). At the 42nd Squad he talked with defendant. Defendant agreed to show where an amount of money was, claimed by defendant to be proceeds from gambling. Defendant requested Detective Cook and a friend (not otherwise identified) of defendant to accompany them. They left a little after 2 p.m. Locating the money, they returned to the 42nd Squad. The money was turned over to Detective Corbett, defendant requesting a receipt. Later he overheard defendant in conversation with Deputy Chief Inspector Walsh, Detective Corbett, Detective Cook and other unnamed detectives and F.B.I. being present; the time being approximately 3:15 or 3:30 p.m. No officer struck defendant. After the questioning he returned to the 30th Squad. He did not question defendant at the 30th Squad about the robbery. He knew that defendant was questioned but did not recall by whom. As far as he knew defendant was not beaten at the 30th Squad.

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At the trial Detective Corbett testified that he did not question defendant at the 30th Squad. At the 42nd Squad he interrogated defendant from about 1 p.m. to 2 p.m. Present were Detectives Beckles and Cook. Then defendant was taken to an address in New York County. On his return he was questioned by Detective Corbett for about 10 minutes. He didn't beat defendant during that time; didn't use profanity; made no threats. Then defendant and he went into the room where Deputy Chief Inspector Walsh, Detectives Beckles and Cook and other members of the Department and some F.B.I. men were present. Corbett told defendant to tell them exactly what he had told Corbett. During the 10 minutes he didn't punch defendant in the stomach; molested him in no way; no hand was laid on any portion of defendant's body.

At the trial on the voir dire defendant testified that at the 30th Squad he was questioned by Deputy Chief Inspector Walsh and Detective Corbett about the location of a sum of money. While held by a couple of detectives, he was hit in the face, the right and left cheeks and the chin but not the nose by Corbett, sometimes in the stomach and groin by Corbett and on the lips by Walsh. After an interval of about 3 or 4 hours, questioning was resumed and the Deputy Chief Inspector and some other detectives (not identified) (Corbett not being present) began beating him again and making threats and continued until the next morning. He had no sleep; nothing to eat. Throughout, he didn't make any statement other than that he had some money that was his. The next day he was taken to the 42nd Squad by three detectives including Beckles and Corbett, arriving about noontime; he had not eaten. Corbett and a couple of other detectives started to beat him so he told where the sum of money was. Accompanied by Detectives Beckles and Cook and a friend of his (not named) he went to the location of the money. On returning to the 42nd Squad another detective was in the room with Detective Corbett and him. The detective (not identified) held him while Corbett hit him 3 or 4 times in the stomach; then a couple more times. He was in the room about half an hour. Then Corbett took him to another room where he was questioned by Deputy Chief Inspector Walsh, Corbett being present. Then he was placed in a detention cage. He tried to sleep on the floor. He had nothing to eat except candy bars brought in by a uniformed officer (at defendant's request). He had a bowl of soup after arraignment the morning of the 19th and again shortly after arrival at the jail, his first solid food in the Bronx County jail the night of the 19th. At his arraignment in Magistrates Court he did not mention to the judge that he had been hit.

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He told an unnamed corrections officer that he had been hit by the police. He was not examined by a doctor February 19th at the jail. He had red marks on his stomach. At the first examination by a doctor 4 or 5 days later he had slight red marks. The first time that he had gone to the doctor was the next day or February 20th. When he was questioned by an Assistant District Attorney, a stenographer being present, he was not threatened or was he told what to say.

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At the trial on the voir dire a Dr. Karpowski testified that he examined defendant February 19, 1958; the defendant had no complaints; had not pathological findings. February 20 defendant did not tell that he had been beaten up on February 17. February 24 defendant complained of indigestion and constipation. A week or two later defendant complained he had pains in his back; that he had been beaten. On February 26 defendant complained of pain in the chest and back, claimed to have resulted from being beaten up on February 17. Examination revealed no pathological signs. On February 28 defendant complained of pain in the upper lumbar region and hematuria after alleged beating on February 17. The hematuria disappeared the following day. The defendant did not remember whether hematuria occurred more than once. On admission the complainant did not complain of hematuria. His abdomen was soft, no tenderness, in the kidney region. On March 3 defendant complained of pain in the perineum and epigastrium; there were no objective findings.

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At the hearing defendant elected not to testify but to rely on his testimony on the voir dire at the trial. One, Louis Johnson testified in defendant's behalf that on a Tuesday in February 1958 he saw the defendant in the 30th Precinct in Manhattan; that he was in a room with defendant for only a few minutes. He heard defendant in another room in loud conversation.

Later on the same day, he saw defendant in the 42nd Precinct in the Bronx once shortly; then on leaving the precinct he saw the defendant lying on the floor. Asked if there was anything he could do for him, defendant said, no. He didn't see any marks on defendant's body. He saw defendant pushed and told to shut up and hit in the stomach like, just pushed away like, by one uniformed officer about 15 or 20 minutes after he had arrived in the 42nd Precinct. He acknowledged that he was convicted for policy and convicted for possession of a hypodermic needle; that he knew defendant about 25 years, considered himself a friend although he had not seen the defendant in five years. Joseph Anthony Jones testified in defendant's behalf and said that in 1958 he lived in a room adjacent to the room in which Louis Johnson lived. He, Jones, was arrested on a Tuesday morning 3 or 4 hours after Johnson was arrested. Taken to the 30th Precinct he remained until 1 or 2 p.m., then was taken to the 42nd Precinct in the Bronx where he remained until 4 or 5 o'clock in the afternoon. In the 30th Precinct he saw the defendant briefly once in a quick shufflelby. At the 42nd Precinct he saw the defendant about four times. He was taken with the defendant to Manhattan and back to retrieve a sum of money. The first time he saw defendant at the 42nd Precinct was a good two minutes when he sort of drifted into the room where defendant was lying on the floor; tried to speak to him but defendant did not respond. The next time he saw 4 or 5 officers who had defendant in a carrying position straight up, taking defendant in a dragging position to a room across from where the witness was sitting. The third time, the defendant was brought to a car where he, Jones, was already seated and they were taken to Manhattan. The last time he saw defendant he was lying on the floor of the cage. He acknowledged prior conviction for petty larceny six

times during the last seven years. Says he knows the defendant for 20 years and that he had not been requested to testify at the trial in 1958.

At the hearing in rebuttal Detective Beckles said that on February 17, 1958 he was assigned to the 30th Detective Squad (Manhattan); that he arrested defendant approximately 8:30 p.m. On February 18 he was in the 30th Precinct from 6:30 a.m. until 11:30 a.m. but does not recall having seen Louis Johnson. About 11:30 a.m. he left the 30th Precinct with Detectives Crobett and Alfano and defendant for the 42nd Precinct (Bronx). At the 42nd he spoke to defendant for 15 or 30 minutes. During that time Detectives Cook and Alfano came into the room and left. No one in his presence beat the defendant, shove him or lay a hand on the defendant. He himself did not beat, shove or lay a hand on defendant. Then Detective Cook, defendant and friend of defendant's and he went to a location in Manhattan where $8,000 was recovered, defendant saying it was his money. Returning to the 42nd Precinct about 3:00 or 3:30 p.m. defendant was interrogated by Detective Corbett. At no time did he see defendant being hit, shoved or pushed. Defendant was not questioned by any uniformed patrolman. He does not recall seeing Louis Johnson at the 42nd Precinct. He says that the defendant was questioned the night of February 17 at the 30th Precinct concerning the robbery. Detective Corbett also testified in rebuttal and said that on February 18 he had escorted the defendant, accompanied by Detectives Beckles and Cook from the 30th Squad to the 42nd Squad. He does not recall having seen Louis Johnson in the 30th Precinct. Johnson was not transported from the 30th to the 42nd Precinct. He, Corbett, did not interrogate the defendant prior to the 42nd Precinct. At the 42nd, he, Beckles, and Cook questioned defendant regarding a sum of money;

thereafter the defendant left with Beckles and Cook. On return, the defendant said "it is my money and I want a receipt." As the money was being counted in another room he questioned defendant for about 10 minutes in the dormitory. Thereafter, defendant was requested to relate to Deputy Chief Inspector Walsh what he had told Corbett; defendant did so and was at the time asked certain questions regarding the stickup, which he answered. Thereafter defendant was questioned by an Assistant District Attorney and his stenographic statement taken. During the time Corbett first arrived at the 30th Precinct until the defendant was booked, no officer or F.B.I. agent pushed, shoved or hit or in any way harmed the defendant. Defendant had no marks on his body and at no time was he lying on the floor of the detention cell. Defendant, on leaving the 30th Precinct, had no difficulty walking; skipped over a snow bank; his eyes were not bloodshot. Detectives Beckles and Cook accompanied defendant to recover the money but he does not recall a third person. He does not know if a third person was in the squad car at that time.

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It is noted that Louis Johnson, with two convictions, and Joseph Anthony Jones, with six convictions, both professing to be friends of defendant, claim they were in the 42nd Precinct on February 18th, saw the defendant and on at least one occasion spoke to defendant; further, that Jones claims to have accompanied defendant to Manhattan and back in the company of detectives. From their testimony it is a fair inference that defendant was aware of Johnson's and Jones' presence in the 42nd Precinct on February 18th. Yet at the trial and during the voir dire defendant named no names and either did not give the name or names of professed friends to his eminent attorney then representing him, or, if he did, said attorney saw fit not to call upon the two alleged wit-

nesses who now, after almost 12 years, are called upon by defendant to relate what they allegedly saw on February 18, 1958.

It is further noted that defendant's own version on the voire dire at the trial is in conflict with the testimony of Detectives Beckles and Corbett, and Doctor Karpowski as is the testimony of Louis Johnson and Joseph Anthony Jones at the hearing. Defendant does not say he complained to the arraigning magistrate or the Assistant District Attorney, both readily identifiable, but does say he complained to an unidentified Correction Officer.

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This Court is satisfied beyond a reasonable doubt that the statements made by defendant to Detective Beckles and to Detective Corbett, respectively, on the 18th of February 1958 at the 42nd Precinct were voluntarily made and were not the result of physical coercion of any kind. Accordingly, the motion is denied. This constitutes the order and decision on the motion.

EXHIBIT E

Order of Justice Fine Granting Confessions Hearing

Supreme Court
County of Bronx

Special and Trial Term Part XII

The People of the State of New York against Alfred Lewis, Defendant	File Number 219 1958 Motion for: Vacate Judgment Submitted September 18, 1969 Argued. Present: Hon. Sidney A. Fine J.S.C.

FILED: September 29, 1969

	Papers Numbered
Notice of Motion and Affidavit Annexed	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	23
Replying Affidavits	
Exhibits	
Stenographer's Minutes	

Upon the foregoing papers and the district attorney consenting thereto, the motion is granted to the extent that defendant will be accorded a hearing on the merits of his petition. The Clerk will prepare the necessary order for production of the defendant.

S.A.F.
J.S.C.

Opinion filed herewith
Dated - Sept. 24, 1969
People's Brief
Defendant's Brief